1952.

File No. Khar Lands
II/52(R)
Legal Dept
B **BRANCH** P 5(c)
1952

Subject:— Rules under the Bom.
Khar Lands Act, 1948

File No.
Bom. 194 e.

Khar Lands II/52
(R)

12-8-B

This file related to the scrutiny of by-laws at p.17 ante under the Bombay Khar Lands Act, 1948.

2. I Regulation of business: A revised draft of the by-laws relating to Regulation of Business is sent herewith. R.D. is requested to verify if the draft by-laws are suitable from the administrative point of view.

3. II Contracts - The proposed by-law provides that subject to the prior approval of the Board, the Chairman shall have powers to enter into any contract for the performance of the functions of the Board. Under section 6 of the Act it is the Board, and not the Chairman, which is competent to contract. The by-law is, therefore, not in order.

Section 7(1)(b) of the Act provides for making by-laws for defining the powers of the Board to enter into contracts and for prescribing the manner of executing such contracts. The scope of the by-laws will have therefore to be limited to these two matters only.

4. III Boards' fund and its operation - The by-laws in this respect provide for depositing the fund in the Personal Ledger Account of the Chairman to be operated by the Chairman and for maintenance of accounts in the prescribed forms. Section 34(1) provides for crediting of all monies received by the Board into a separate account maintained for the purpose in the Government treasury,. Under sub-section (2), all funds for disbursements have to be drawn by means of cheques signed by the Chairman or the authorised member. The monies will therefore have to be deposited in the name of the Board and the Act itself authorises the Chairman to operate onit. It will not therefore be legally feasible to provide for depositing the fund in the Personal Ledger

account of the Chairman since it is not feasible open a personal ledger account in the name of the chairman, the question of maintaining accounts does not arise. The draft by-laws are therefore outside the scope of the Act and the Board should be advised to omit them.

5. IV Preparation of Schemes. Section 7(1)(c) empowers the Board to make by-laws for any other matter for which provisions is required to be made for the efficient discharge of its duties or business. Section 11 lays down the duties of the Board Section 12 provides for the preparation of the Scheme. The power to prepare scheme has been vested in the Board itself with the result that all orders or action will have to be issued by the Board. No delegation of its duties would be permissible as such a provision in the proposed by-laws will be considered as inconsistent with the provisions of the Act. No special provisions as now proposed appear to be necessary.

(1) Moreover by-law '1' as it stands is very vague inasmuch as the by-law does not indicate the authority which should make a thorough investigation into financial implications and for collecting information on the points referred to in section 12(2).

(2) By-law '2' is necessary The Board can always consult the different departments of Governments through the Revenue Dept.

(3) By-law'3' provides for delegation of certain powers of the Chairman. No delegation is legally feasible under the Act. e.g. section 13(2) empowers the Board to authorize a person ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ to ~~been~~ have objections. The power of the Board cannot therefore be delegated to the Chairman. Similarly on receiving the report of an authorized person under section 14(1) the Board, has to submit the draft scheme with any modifications which it may have made therein. The Board is therefore required under section 15(1) to suggest modifications in the draft scheme and this power of the Board cannot be delegated to the Chairman. Again under section 17, the Board, is required to

execute the scheme according to the prescribed rules. By law (3) is therefore not in order.

(4) By-law (5) provides for abandonment of a scheme, It is not clear from the by-laws the stage at which it is intended to drop a scheme. According to the provisions of sections 12,13,14,and 15 once the draft scheme is prepared and published, the Board has no other alternative but to submit the scheme to Government for sanction and the Government has power to sanction or refuse to sanction the scheme. The Board may therefore request the Government to refuse the sanction in any case in which the Board is of opinion that it is not worthwhile undertaking a Scheme. If however, it is intended to take power for dropping a draft scheme before it is published, it is obvious that no specific by-law is necessary for the purpose.

6. V Execution of Scheme.

(a) As pointed out above, section 17 provides that after a scheme has come into force under the Act, the Board shall execute the scheme in accordance with the rules prescribed in that behalf. Rule 9 of the Bombay Khar Lands Rules, 1949 has made the requisite provision in that behalf. No by-laws can therefore be made by the Board for the purposes of execution of scheme. Whatever additional provisions are necessary for the purposes of execution of a schee may be mde in the rules themselves.

(b) By-law 1.- This is reduntant. (Vide section 17).

(c) By-law 2.- This is inconsistent with the provisions of the Act and the Rules. Under rule 9 of the Rules, the Board has to appoint an officer. The power cannot be delegated to the Chairman.

(d) By-law 3.- The plans and estimates are included in the scheme which has come into force. The question of administrative approval does not arise.

(e) By-law 4- This forms part of the scheme itself and no by law is necessary.

(f) By-law 5- If there is any variation in the scheme

the Board will ~~now~~ have to proceed under section 17(4) of the Act for sanction of the Government. The by-law i therefore not in order.

(g) By-law 6- Once the scheme is sanctioned by the Government the question of technical sanction cannot ari

(h) By-law 7- The by-law is not necessary (Vide para 5(2) above)

(i) By-laws 8 to 17.- These by-laws cannot be made for the reasons stated in clause (a) above. The rules in that behalf may be suitably amended.

(j) By-law 18.- This by-law empowers the Chairman to sanction minor modifications to items of work under a scheme subject to the condition that the additional amount involved does not exceed 10% of the estimated cost Variation in the estimated cost means variation of the sanctioned scheme. and ~~empower~~ cannot be taken to the Chairman to make any such variation. The by-law is in consistent with the provisions of section 17A and is not legally in order.

7. VI Payment for works. The by-laws relating to payment for works are also referrable to execution of the scheme. Moreover, the expenditure wil be incurred from the fund, and under section 37(2) the balances of the fund can be expended by the Board in such manner and for such purposes as may be prescribed. The Board has therefore been empowered to expend and the manner of expending by the Board will have to be prescribed by means of rules The proper place of the proposed by-laws is therefore in the rules made in that behalf.

8. VII Maintenance Committee and its duties. (a) By-law 1 to 10 provides for consituttin the committees. These by-laws are inconsistent with the provisions of section 19 under which the manner of appointing a committee has to be prescribed by means of rules made by Government

in that behalf. Consequently, the by-laws would be outside the scope of section 7. An amendment of the rules would be necessary for the purpose.

(b) Section 19, moreover does not empower the Board to make any by-laws for laying down duties of Committees appointed under that section. Since a Committee would be appointed for each unit, it may not be desirable to lay down common duties for all such Committees. The Board may have therefore to determine such duties in each case with reference to the nature of work and other considerations relating to the Scheme.

9. VIII Emergency repairs. Rule (27) provides that all monies required for emergency repairs shall be available from the sinking fund. Section 38, provides for the maintenance of a sinking fund. The power to apply the sinking fund vests in the Board. The proposed by-laws which seek to empower the Committee to incur expenditure ~~which seek to empower the~~ on emergency repairs from out of the sinking fund is therefore not in order.

10. Current repairs. It is presumed the work of current repairs will be done by the Committee appointed under section 19 as required by that section. If so, it is not necessary to make the proposed by-laws as the Board can achieve the object by issuing necessary directions in that behalf to the Committee.

~~Sd. J.R. Dhurandhar.~~ B.P.B.
~~12/9~~
Deputy
Additional Secretary to Government.

U.R. to R.D. No. 14990/B dated the 13th Sept. 1952.

VGP. 5-7-56.